

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 15-1510 and by adding Sections 15-1504.5 and
6 15-1505.5 as follows:

7 (735 ILCS 5/15-1504.5 new)

8 Sec. 15-1504.5. Homeowner notice to be attached to summons.

9 For all residential foreclosure actions filed, the plaintiff
10 must attach a Homeowner Notice to the summons. The Homeowner
11 Notice must be in at least 12 point type and in English and
12 Spanish. The Spanish translation shall be prepared by the
13 Attorney General and posted on the Attorney General's website.
14 A notice that includes the Attorney General's Spanish
15 translation in substantially similar form shall be deemed to
16 comply with the Spanish notice requirement in this Section. The
17 Notice must be in substantially the following form:

18 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

19 **1. POSSESSION:** The lawful occupants of a home have the
20 right to live in the home until a judge enters an order for
21 possession.

1 **2. OWNERSHIP:** You continue to own your home until the
2 court rules otherwise.

3 **3. REINSTATEMENT:** As the homeowner you have the right
4 to bring the mortgage current within 90 days after you
5 receive the summons.

6 **4. REDEMPTION:** As the homeowner you have the right to
7 sell your home, refinance, or pay off the loan during the
8 redemption period.

9 **5. SURPLUS:** As the homeowner you have the right to
10 petition the court for any excess money that results from a
11 foreclosure sale of your home.

12 **6. WORKOUT OPTIONS:** The mortgage company does not want
13 to foreclose on your home if there is any way to avoid it.
14 Call your mortgage company [insert name of the homeowner's
15 current mortgage servicer in bold and 14 point type] or its
16 attorneys to find out the alternatives to foreclosure.

17 **7. PAYOFF AMOUNT:** You have the right to obtain a
18 written statement of the amount necessary to pay off your
19 loan. Your mortgage company (identified above) must
20 provide you this statement within 10 business days of
21 receiving your request, provided that your request is in
22 writing and includes your name, the address of the
23 property, and the mortgage account or loan number. Your
24 first payoff statement will be free.

25 **8. GET ADVICE:** This information is not exhaustive and
26 does not replace the advice of a professional. You may have

1 other options. Get professional advice from a lawyer or
2 certified housing counselor about your rights and options
3 to avoid foreclosure.

4 **9. LAWYER:** If you do not have a lawyer, you may be able
5 to find assistance by contacting the Illinois State Bar
6 Association or a legal aid organization that provides free
7 legal assistance.

8 **10. PROCEED WITH CAUTION:** You may be contacted by
9 people offering to help you avoid foreclosure. Before
10 entering into any transaction with persons offering to help
11 you, please contact a lawyer, government official, or
12 housing counselor for advice.

13 (735 ILCS 5/15-1505.5 new)

14 Sec. 15-1505.5. Payoff demands.

15 (a) In a foreclosure action subject to this Article, on the
16 written demand of a mortgagor or the mortgagor's authorized
17 agent (which shall include the mortgagor's name, the mortgaged
18 property's address, and the mortgage account or loan number), a
19 mortgagee or the mortgagee's authorized agent shall prepare and
20 deliver an accurate statement of the total outstanding balance
21 of the mortgagor's obligation that would be required to satisfy
22 the obligation in full as of the date of preparation ("payoff
23 demand statement") to the mortgagor or the mortgagor's
24 authorized agent who has requested it within 10 business days
25 after receipt of the demand. For purposes of this Section, a

1 payoff demand statement is accurate if prepared in good faith
2 based on the records of the mortgagee or the mortgagee's agent.

3 (b) The payoff demand statement shall include the
4 following:

5 (1) the information necessary to calculate the payoff
6 amount on a per diem basis for the lesser of a period of 30
7 days or until the date scheduled for judicial sale;

8 (2) estimated charges (stated as such) that the
9 mortgagee reasonably believes may be incurred within 30
10 days from the date of preparation of the payoff demand
11 statement; and

12 (3) the loan number for the obligation to be paid, the
13 address of the mortgagee, the telephone number of the
14 mortgagee and, if a banking organization or corporation,
15 the name of the department, if applicable, and its
16 telephone number and facsimile phone number.

17 (c) A mortgagee or mortgagee's agent who willfully fails to
18 prepare and deliver an accurate payoff demand statement within
19 10 business days after receipt of a written demand is liable to
20 the mortgagor for actual damages sustained for failure to
21 deliver the statement. The mortgagee or mortgagee's agent is
22 liable to the mortgagor for \$500 if no actual damages are
23 sustained. For purposes of this subsection, "willfully" means a
24 failure to comply with this Section without just cause or
25 excuse or mitigating circumstances.

26 (d) The mortgagor must petition the judge within the

1 foreclosure action for the award of any damages pursuant to
2 this Section, which award shall be determined by the judge.

3 (e) Unless the payoff demand statement provides otherwise,
4 the statement is deemed to apply only to the unpaid balance of
5 the single obligation that is named in the demand and that is
6 secured by the mortgage or deed of trust identified in the
7 payoff demand statement.

8 (f) The demand for and preparation and delivery of a payoff
9 demand statement pursuant to this Section does not change any
10 date or time period that is prescribed in the note or that is
11 otherwise provided by law. Failure to comply with any provision
12 of this Section does not change any of the rights of the
13 parties as set forth in the note, mortgage, or applicable law.

14 (g) The mortgagee or mortgagee's agent shall furnish the
15 first payoff demand statement at no cost to the mortgagor.

16 (h) For the purposes of this Section, unless the context
17 otherwise requires, "deliver" or "delivery" means depositing
18 or causing to be deposited into the United States mail an
19 envelope with postage prepaid that contains a copy of the
20 documents to be delivered and that is addressed to the person
21 whose name and address are provided in the payoff demand.
22 "Delivery" may also include transmitting those documents by
23 telephone facsimile to the person or electronically if the
24 payoff demand specifically requests and authorizes that the
25 documents be transmitted in electronic form.

26 (i) The mortgagee or mortgagee's agent is not required to

1 comply with the payoff demand statement procedure set forth in
2 this Section when responding to a notice of intent to redeem
3 issued under Section 15-1603(e).

4 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

5 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~
6 ~~Agreement.~~

7 (a) The court may award reasonable attorney's fees and
8 costs to the defendant who prevails in a motion, an affirmative
9 defense or counterclaim, or in the foreclosure action. A
10 defendant who exercises the defendant's right of reinstatement
11 or redemption shall not be considered a prevailing party for
12 purposes of this Section. Nothing in this subsection shall
13 abrogate contractual terms in the mortgage or other written
14 agreement between the mortgagor and the mortgagee or rights as
15 otherwise provided in this Article which allow the mortgagee to
16 recover attorney's fees and costs under subsection (b).

17 (b) Attorneys' fees and other costs incurred in connection
18 with the preparation, filing or prosecution of the foreclosure
19 suit shall be recoverable in a foreclosure only to the extent
20 specifically set forth in the mortgage or other written
21 agreement between the mortgagor and the mortgagee or as
22 otherwise provided in this Article.

23 (Source: P.A. 86-974.)

24 Section 10. The Illinois Human Rights Act is amended by

1 changing Section 10-104 as follows:

2 (775 ILCS 5/10-104)

3 Sec. 10-104. Circuit Court Actions by the Illinois Attorney
4 General.

5 (A) Standing, venue, limitations on actions, preliminary
6 investigations, notice, and Assurance of Voluntary Compliance.

7 (1) Whenever the Illinois Attorney General has
8 reasonable cause to believe that any person or group of
9 persons is engaged in a pattern and practice of
10 discrimination prohibited by this Act, the Illinois
11 Attorney General may commence a civil action in the name of
12 the People of the State, as *parens patriae* on behalf of
13 persons within the State to enforce the provisions of this
14 Act in any appropriate circuit court. Venue for this civil
15 action shall be determined under Section 8-111(B)(6). Such
16 actions shall be commenced no later than 2 years after the
17 occurrence or the termination of an alleged civil rights
18 violation or the breach of a conciliation agreement or
19 Assurance of Voluntary Compliance entered into under this
20 Act, whichever occurs last, to obtain relief with respect
21 to the alleged civil rights violation or breach.

22 (2) Prior to initiating a civil action, the Attorney
23 General shall conduct a preliminary investigation to
24 determine whether there is reasonable cause to believe that
25 any person or group of persons is engaged in a pattern and

1 practice of discrimination declared unlawful by this Act
2 and whether the dispute can be resolved without litigation.
3 In conducting this investigation, the Attorney General
4 may:

5 (a) require the individual or entity to file a
6 statement or report in writing under oath or otherwise,
7 as to all information the Attorney General may consider
8 necessary;

9 (b) examine under oath any person alleged to have
10 participated in or with knowledge of the alleged
11 pattern and practice violation; or

12 (c) issue subpoenas or conduct hearings in aid of
13 any investigation.

14 (3) Service by the Attorney General of any notice
15 requiring a person to file a statement or report, or of a
16 subpoena upon any person, shall be made:

17 (a) personally by delivery of a duly executed copy
18 thereof to the person to be served or, if a person is
19 not a natural person, in the manner provided in the
20 Code of Civil Procedure when a complaint is filed; or

21 (b) by mailing by certified mail a duly executed
22 copy thereof to the person to be served at his or her
23 last known abode or principal place of business within
24 this State.

25 (4) In lieu of a civil action, the individual or entity
26 alleged to have engaged in a pattern or practice of

1 discrimination deemed violative of this Act may enter into
2 an Assurance of Voluntary Compliance with respect to the
3 alleged pattern or practice violation.

4 (5) The Illinois Attorney General may commence a civil
5 action under this subsection (A) whether or not a charge
6 has been filed under Sections 7A-102 or 7B-102 and without
7 regard to the status of any charge, however, if the
8 Department or local agency has obtained a conciliation or
9 settlement agreement or if the parties have entered into an
10 Assurance of Voluntary Compliance no action may be filed
11 under this subsection (A) with respect to the alleged civil
12 rights violation practice that forms the basis for the
13 complaint except for the purpose of enforcing the terms of
14 the conciliation or settlement agreement or the terms of
15 the Assurance of Voluntary Compliance.

16 (6) If any person fails or refuses to file any
17 statement or report, or obey any subpoena, issued pursuant
18 to subdivision (A)(2) of this Section, the Attorney General
19 will be deemed to have met the requirement of conducting a
20 preliminary investigation and may proceed to initiate a
21 civil action pursuant to subdivision (A)(1) of this
22 Section.

23 (B) Relief which may be granted.

24 (1) In any civil action brought pursuant to subsection
25 (A) of this Section, the Attorney General may obtain as a
26 remedy, equitable relief (including any permanent or

1 preliminary injunction, temporary restraining order, or
2 other order, including an order enjoining the defendant
3 from engaging in such civil rights violation or ordering
4 any action as may be appropriate). In addition, the
5 Attorney General may request and the Court may impose a
6 civil penalty to vindicate the public interest:

7 (a) for violations of Article 3 and Article 4 in an
8 amount not exceeding \$25,000 per violation, and in the
9 case of violations of all other Articles in an amount
10 not exceeding \$10,000 if the defendant has not been
11 adjudged to have committed any prior civil rights
12 violations under the provision of the Act that is the
13 basis of the complaint;

14 (b) for violations of Article 3 and Article 4 in an
15 amount not exceeding \$50,000 per violation, and in the
16 case of violations of all other Articles in an amount
17 not exceeding \$25,000 if the defendant has been
18 adjudged to have committed one other civil rights
19 violation under the provision of the Act within 5 years
20 of the occurrence of the civil rights violation that is
21 the basis of the complaint; and

22 (c) for violations of Article 3 and Article 4 in an
23 amount not exceeding \$75,000 per violation, and in the
24 case of violations of all other Articles in an amount
25 not exceeding \$50,000 if the defendant has been
26 adjudged to have committed 2 or more civil rights

1 violations under the provision of the Act within 5
2 years of the occurrence of the civil rights violation
3 that is the basis of the complaint.

4 (2) A civil penalty imposed under subdivision (B) (1) of
5 this Section shall be deposited into the Attorney General
6 Court Ordered and Voluntary Compliance Payment Projects
7 Fund, which is a special fund in the State Treasury. Moneys
8 in the Fund shall be used, subject to appropriation, for
9 the performance of any function pertaining to the exercise
10 of the duties of the Attorney General including but not
11 limited to enforcement of any law of this State and
12 conducting public education programs; however, any moneys
13 in the Fund that are required by the court or by an
14 agreement to be used for a particular purpose shall be used
15 for that purpose.

16 (3) Aggrieved parties seeking actual damages must
17 follow the procedure set out in Sections 7A-102 or 7B-102
18 for filing a charge.

19 (Source: P.A. 93-1017, eff. 8-24-04.)

20 Section 15. The Illinois Fairness in Lending Act is amended
21 by changing Section 3 as follows:

22 (815 ILCS 120/3) (from Ch. 17, par. 853)

23 Sec. 3. No financial institution, in connection with or in
24 contemplation of any loan to any person, may:

1 (a) Deny or vary the terms of a loan on the basis that a
2 specific parcel of real estate offered as security is located
3 in a specific geographical area.

4 (b) Deny or vary the terms of a loan without having
5 considered all of the regular and dependable income of each
6 person who would be liable for repayment of the loan.

7 (c) Deny or vary the terms of a loan on the sole basis of
8 the childbearing capacity of an applicant or an applicant's
9 spouse.

10 (c-5) Deny or vary the terms of a loan on the basis of the
11 borrower's race, gender, disability, or national origin.

12 (d) Utilize lending standards that have no economic basis
13 and which are discriminatory in effect.

14 (e) Engage in equity stripping or loan flipping.

15 (Source: P.A. 93-561, eff. 1-1-04.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law, except Section 5 takes effect January 1, 2009.